

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10683-RWZ

PALOMAR MEDICAL TECHNOLOGIES, INC. and
THE GENERAL HOSPITAL CORPORATION

v.

CUTERA, INC.

MEMORANDUM OF DECISION

May 5, 2006

ZOBEL, D.J.

Plaintiffs Palomar Medical Technologies, Inc. ("Palomar") and The General Hospital Corporation ("GHC") filed suit against defendant Cutera, Inc. for violation of federal patent law set forth in 35 U.S.C. § 271(a) and (b). These provisions prohibit infringement of a patent by making, using, offering to sell or selling a patented invention without authority to do so. They further prohibit inducement of infringement. According to plaintiffs, certain of defendant's hair removal products violate both the 5,595,568 and the 5,735,844 (the "'844 patent") patents of which Palomar is the exclusive licensee and GHC is the assignee.

Defendant now moves for dismissal of the Complaint on the basis that the court lacks personal jurisdiction and venue. However, in all of its papers, defendant never reconciles its position in this case with the fact that in a related case also before me and also involving the '844 patent, Civil Action No. 02-10258 (the "2002 case"), its original Answer to the Amended Complaint admitted jurisdiction, specifically:

“[defendant] admits that venue is proper and that it has transacted business in this district.” (Answer ¶ 6). A subsequently filed Amended Answer in that same case contained the same admission that “[defendant] has transacted business in this district.” (Am. Answer ¶ 6). The 2002 case and the instant case raise similar allegations but against different products manufactured and sold by defendant, and as a factual matter, it is unclear why the business transactions supporting jurisdiction in the 2002 case would not similarly sustain jurisdiction in the instant case. Absent such an explanation, defendant’s Motion to Dismiss (#3 on the docket) is denied.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE